

In re of Appln. NO. 09/763,415

(Please note that Paper No. 13 was mailed out on September 16, before expiration of the full six month term.)

On July 21, 2003, applicant filed an "Amendment After Final" with a petition for one month's extension of time.

Contrary to what is stated in the "Notice of Abandonment", applicant filed no reply on August 19, 2003, but did file by fax a copy of the Reply file July 21, 2003.

On September 22, 2003, Applicant filed a Request for Continued Examination (RCE) Transmittal, along with certain other papers, as well as a petition for an additional extension of time, and the requisite fees. September 22, 2003, was a Monday, whereby the filing was timely to avoid abandonment of the present application.

REMARKS

As indicate above, the Notice of Abandonment makes no sense to applicants. It was mailed before expiration of the full six-month term.

At any rate, applicant timely field a reply to the Final Rejection but never received any written feedback from the PTO. However, during a telephone conference with Examiner Hines on August 19, 2003, applicant was informed that the amendment after final action had not been received by Examiner Hines. Accordingly, a duplicate copy was faxed to Examiner

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Hines with evidence (copy of post card receipt) of the timely filing of such Reply after final action on July 21, 2003.

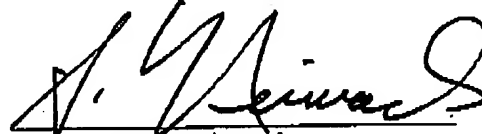
Regardless, the Notice of Abandonment is *prima facie* incorrect because the statutory term is six months, and an application cannot become retroactively abandoned to an earlier date until the full six month term has expired. Paper No. 13 was clearly premature, and the present application has not been abandoned.

Accordingly, applicant requests that such Notice of Abandonment be vacated.

Respectfully submitted,

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